IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23851 of 2007

With

SPECIAL CIVIL APPLICATION No. 23852 of 2007
To
SPECIAL CIVIL APPLICATION No. 23859 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KRUPESH CHANDUBHAI PATEL & 8 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s) : 1 - 9.
MR HEMANT MAKWANA, ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR MUKESH H RATHOD for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/10/2007

COMMON ORAL JUDGMENT

1. Rule. Mr Hemant Makwana, learned AGP appearing for the respondent nos.1 & 2 and Mr Mukesh Rathod, learned advocate appearing for the respondent nos. 3 & 4 waive service of rule.

2. The petitioners have approached this Court under Article 226 of the Constitution of India challenging the order dated 05.09.07 passed by the Collector, Anand staying the enforcement and implementation of the Resolution No. 75 passed by the Municipality dated 10.08.07 whereunder the municipality decided to accord the benefit of 5th Pay Commission to the present petitioners.

2.1 The Collector has stayed the said resolution in exercise of his powers under Section 258 of the Gujarat Municipalities Act, 1963 as the resolution was passed pending approval and sanction from the competent authority and what is stayed is the implementation of the resolution only.

3. Mr T.R Mishra, learned advocate appearing for the petitioners has submitted that the present petitioners are serving in the municipalities since years and they have been infact granted the benefit of the 4th Pay Commission.

4. Mr Mukesh Rathod, learned advocate appearing for

the respondent nos. 3 & 4 has submitted that the proposal to accord the benefit of 5th Pay Commission to the present petitioners was made on 17.10.05 which is still pending the approval from the competent authorities and as no query is raised and as the municipality is not incurring establishment expenditure more than 45% of the total expenditure there ought not to have been any objection in according the benefit of 5th Pay Commission to the present petitioners also.

5. Mr Mishra has submitted that the direction to the Director of Municipalities for finalizing the proposal of the municipality dated 17.10.05 would automatically redress the grievances of the petitioners. Learned AGP Mr Makwana, Mr Mishra and Mr Rathod have submitted that the proposal of the municipality could be decided within a stipulated time period.

6. Heard learned counsel for the parties. This petition deserves to be disposed of on issuance of certain directions as it is one of the prayers in the petition that the Director of Municipalities be directed to finalize the proposal for sanctioning the establishment strength as the proposal is already pending since 17.10.05 which is produced on record of the petition at page 41 as Annexure 'M'. In view of this, directions are issued in the interest of justice.

7. The Director of Municipalities-respondent no.2 is hereby directed to finalise the proposal dated 17.10.05 made by the Karamsad Nagar Palika, Karamsad for bringing these nine petitioners within the set up. The Director of Municipalities-respondent no. 2 shall decide and finalise the same within a period of 45 days from the date of receipt of this order. The Municipality is directed to be prompt enough in supplying and submitting the response to any query which may be raised by the Director of Municipalities for expeditious disposal and finalization of the proposal dated 17.10.05.

8. With the aforesaid directions, this petition is disposed of. Rule is made absolute to the aforesaid extent only. Liberty is reserved to the parties to approach this Court in case of difficulty. Direct service is permitted. Office is directed to keep copy of this order in all the matters.

(S.R.BRAHMBHATT, J.)

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